

**Arkwood Meeting of September 5, 2013 with Curt Grisham
at EPA Region 6, Dallas Texas**

SUMMARY NOTES TO AGENDA ITEMS

(by Attendees from EPA Region 6, EPA Headquarters and ADEQ)

October 18, 2013

Arkwood Meeting Agenda - September 5, 2013 - 1:00 PM CT - EPA Region 6
Top-level Outline - Supporting Documentation Appended by Compact Disk

- I. Promise of the Administrator - EPA FY 2011-2015 Strategic Plan (SP)
- II. Unfulfilled promises in official communications
- III. Ignored letter to John Chamberlin, Chair, Arkansas Pollution Control and Ecology Commission (APC&EC) as delivered by Hon. Charles Moulton, Administrative Law Judge, APC&EC, not acknowledged or answered by APC&EC or ADEQ
- IV. ADEQ & EPA: resolve and unify Arkwood Superfund Site H2O Remedial Goal for pentachlorophenol contamination levels
- V. Suggestions for EPA improvement
- VI. New Conceptual Site Model
- VII. Comments and questions on EPA "draft of the corrected deed notice" VIII.

Arkwood Land Revitalization

- IX. Liability concerns
- X. Close Out / Deletion
- XI. Discontinuance of on-site H2O injection "pilot study"

Attendees at September 5, 2013 meeting (In Person and via Telephone):

Community:

Curt Grisham, Community Member

EPA HQ:

Marlene Berg, National Dioxin Coordinator
Scott Huling, Hydro Support

EPA R6:

Stephen Tzhone, Remedial Project Manager
Gloria Moran, Site Attorney
Ghassan Khoury, Risk Assessor
Jon Rauscher, Risk Assessor
Kent Becher, USGS Hydro Support
Dwayne Patrick, FOIA Coordinator
Donn Walters, Community Involvement
Joy Campbell, Community Involvement Team Leader
Carlos Sanchez, AR/TX Remedial Section Chief
Charles Faultry, Remedial Branch Associate Director

ADEQ:

Mark Moix, Project Coordinator
Dara Hall, Site Attorney
Grant Kneebone, Geologist
Charles Johnson, Geologist
Mary Barnett, Water Quality Ecologist
Annette Cusher, Engineer Supervisor
Dianna Kilburn, Geologist Supervisor
Doug Ritchie, Risk Assessor Supervisor
Jay Rich, Hazardous Waste Technical Branch Manager
Sarah Clem, Water Quality Branch Manager

I. Promise of the Administrator - EPA FY 2011-2015 Strategic Plan (SP)

- A. *"To follow the Administration's focus on strengthening programs and achieving results, the EPA is implementing near-term Priority Goals that serve as key indicators of progress toward our five strategic goals. We will continue to affirm the core values of **science, transparency and the rule of law** in addressing these priorities. These are the most urgent issues we must confront through 2015"* (Emphasis added)

1. Lisa P. Jackson, p. 1, "Message from the Administrator," Fiscal Yea 2011–2015 EPA Strategic Plan, Achieving Our Vision, U.S. Environmental Protection, Agency September 30, 2010

- B. Strategic Goal 3 (of 5 in SP): "Cleaning Up Communities and Advancing Sustainable Development"

1. Objective 3 (of 4 under Goal 3 in SP): "Restore Land"

- a) "In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, **EPA has initiated the Integrated Cleanup Initiative (ICI)**, a multi-year effort to better use the most appropriate assessment and cleanup authorities to address a greater number of sites, **accelerate cleanups, and put sites back into productive use** while protecting human health and the environment." (Emphasis added)
- b) "**As part of the ICI**, EPA will develop a **new suite of performance measures** that will **support comprehensive management** of the cleanup life cycle by addressing three critical points in the cleanup process—starting, **advancing**, and **completing site cleanup**." (Emphasis added)
- c) "EPA is also implementing its Community Engagement Initiative designed to enhance our involvement with local communities and stakeholders so that they may **meaningfully participate in decisions** on land cleanup, emergency response, and management of hazardous substances and waste." (Emphasis added)
- d) "The goals of this initiative are to **ensure transparent and accessible** decision-making processes, to **deliver information** that communities can use to participate meaningfully, to **improve EPA responsiveness** to community perspectives, and to **ensure timely cleanup decisions**." (Emphasis added)

C. Questions pertinent to above:

- (1) **Has ICI been implemented for Arkwood Superfund Site?**
- (2) **Has Community Engagement Initiative been implemented for Arkwood Superfund Site?**
- (3) **Describe EPA ICI performance measures regarding Arkwood for:** (a) **accelerating cleanup**
 - (b) **advancing site cleanup**
 - (c) **completing site cleanup**
 - (d) **putting site back into productive use**
 - (e) **supporting comprehensive management**
 - (f) **enhancing EPA involvement with local communities**
 - (g) **delivering information**
 - (h) **ensuring transparency and accessibility**
 - (i) **improving EPA responsiveness**
 - (j) **ensure timely cleanup decisions**

Curt Grisham stated that this topic was self-explanatory and that everyone should read it. Carlos Sanchez explained that the EPA wants to be held to these standards and that transparency is critical to the EPA. Donn Walters stated that he had worked on the community involvement plan for the site, and that the original plan was in the repository for the site. Joy Campbell stated that fact sheets and history related to community involvement would be shared and that, in consultation with Stephen Tzhone, the community involvement plan for the site would be updated. Carlos Sanchez stated that preliminary close out report had been completed, but the remedy at the site is on-going and not complete.

II. Unfulfilled promises in official communications:

A. Letter dated November 15, 2006 from Devine to Arkansas State Representative Charles L. Ormond

1. **“Based on all available information, I see no reason the site can not be redeveloped and placed back into productive use.** As we have discussed, this would allow Boone County’s economic development agency to market this site for future industrial uses.”

B. Letter dated November 4, 1989 from Myron O. Knudson P.E., Director, Superfund Division, EPA Region 6 to Judge Dale Wagner of Boone County, Arkansas

1. **“However, cleanup of the groundwater New Cricket Spring, is anticipated soon. As soon as this happens EPA plans to delist the site from the NPL and return it to productive use.”**

EPA Region 6 will review the letter dated November 4, 1989 from Mr. Knudson and assess any recommendations and opinions in the context of current EPA cleanup policies and site conditions. Thus far, from the date of this letter to present, the groundwater has not achieved its cleanup goal as specified in the 1990 Record of Decision. In addition, EPA HQ policy on dioxin goals changed in 2012, which necessitated a re-evaluation of the soil remedy.

III. Why was my letter May 16, 2012 to John Chamberlin, Chair, Arkansas Pollution Control and Ecology Commission never acknowledged or answered?

A. Delivered via Hon. Charles Moulton, Administrative Law Judge on moulton@adeq.state.ar.us

ADEQ does not know why the Commission did not respond. Curt Grisham then asked about the relationship and duties between the APC&EC and ADEQ. Dara Hall gave the following answer: Per state law Ark Code

Ann. § 8-4-201, the Commission is given the duty to promulgate environmental rules and regulations, and to act as a quasi-judicial body to which parties could appeal certain final actions or decisions of ADEQ as allowed by State law. The Commission has no authority to direct ADEQ on its day- to-day operations. ADEQ pursuant to State law, again Ark Code Ann. § 8-4-201, is given the power to enforce and administer all laws and regulations relating to the pollution of any waters of the state.

Curt Grisham then asked who the Commission answered to, and Dara Hall replied the Commission answers to no one, they are an independent decision-making body, but their decisions can be appealed to Circuit Court pursuant to State law.

- IV. ADEQ & EPA: resolve and unify Arkwood Superfund Site H2O Remedial Goal for pentachlorophenol contamination levels and address following inconsistencies:
- A. "Estimated Environmental Concentrations (EECs) for surface water have been calculated by the Agency. Drinking water levels of concern (DWLOCs) for acute and chronic dietary risk from drinking water were calculated. DWLOCs calculated for surface water for pentachlorophenol were **10,465 ppb for adult** males and females and **2,990 ppb for children** ages 1-6." (Emphasis added)
1. Frank T. Sanders, Director, Antimicrobials Division, EPA, in the Reregistration Eligibility Decision for Pentachlorophenol, September 28, 2008 EPA 739-R-08-008
- B. "Organisms in the effluent discharge stream experience chronic exposure, therefore; the **chronic standard of 15.57 ug/l is the appropriate standard for the Arkwood Site.**"
1. Sarah Clem, ADEQ Branch Manager, Water Quality Planning, Water Division, ADEQ to EPA Region 6, letter of February 14, 2012
- C. "According to the email from Jean Mescher, McKesson, dated October 3, 2012 provided with the subject report, samples cannot be obtained 20 feet downstream from the weir as requested by ADEQ during periods of low flow since the effluent 'sinks into the subsurface before reaching the culvert'. This statement describes the effluent returning to a subsurface status and therefore returning to the state of groundwater. For this reason the **Maximum Contaminant Level (MCL) for pentachlorophenol (PCP) of 1.0 ug/l should be used in lieu of the aquatic toxicity standard of 15.57 ug/l which is currently used.**"
1. Mark Moix, Engineer, PE, Technical Branch, Hazardous Waste Division, ADEQ in a certified letter dated November 6, 2012 to Ruben Moya, RPM Superfund, EPA Region 6 (Emphasis added)
- D. "During the review, it was noticed that the ADEQ water quality standard of 15.57 ug/l is apparently being used as the screening level for PCP in lieu of the MCL of 1.0 ug/l. However, this standard pertains to aquatic toxicity only and does not address **potential human health concerns**. Even as it is apparently assumed that the stream is **not a source for potable water**, the **MCL of 1.0 ug/l should be the applicable screening level** for the following reasons:
- Much of the groundwater which rises from the spring and becomes surface water returns to groundwater and **appears to migrate offsite, as groundwater** •According to past correspondence, it appears the consensus of the EPA, ADEQ and McKesson, that **some groundwater is circumventing the spring and migrating beyond** the spring as groundwater."
1. Mark Moix, Engineer, PE, Technical Branch, Hazardous Waste Division, ADEQ in a certified letter dated November 6, 2012 to Ruben Moya, RPM Superfund, EPA Region 6 (Emphasis added)

Curt Grisham questioned the standards specified in the ADEQ February 14, 2012 and November 6, 2012 letters and asked which standard should apply to the Arkwood site, the surface water quality chronic standard of 15.57 ug/L, or the maximum contaminant level of 1.0 ug/L? Dianna Kilburn replied that the surface water quality chronic standard and the maximum contaminant level are not mutually exclusive: the first standard applies to surface water (when the water exists as a spring), and the second standard applies to groundwater (before water exits the subsurface or when the surface water returns to a subsurface status).

Sarah Clem also replied that on August 16, 2013 Act 954 of 2013 became effective. Arkansas Code § 8-4-202(b)(3)(iv)(a) states: "Except as provided in subdivision (b)(3)(B)(iv)(b) of this section, a water quality standard to protect or maintain the use of a domestic water supply may be developed and implemented only for a stream segment, lake, or reservoir that: (1) Has an existing use as a domestic water supply; or (2) Is listed in the Arkansas Water Plan as a planned or potential domestic water supply." ADEQ indicated that neither of these requirements applies to New Cricket Spring and that the previous communicated Designated Use of Domestic Water Supply for New Cricket Spring was removed after the effective date of Act 954 of 2013.

Dara Hall replied that unless otherwise stated, if groundwater tests below 10,000 parts per million Total Dissolved Solids (TDS), the waters of the state of Arkansas will be considered drinking water.

Curt Grisham then asked about the MCL standard as law. Annette Cusher replied that the MCL is the maximum permissible level of contaminant allowed in drinking water. Since the MCL is a federal law it is a legally enforceable standard. Jon Rauscher stated that MCLs are promulgated under the CWA drinking water requirements. Dara Hall referenced the Code of Federal Regulations and stated that Title 40 CFR Part 141.24 contains the applicable MCL for pentachlorophenol. Gloria Moran reiterated that reference as well.

- E. "At this time, **ADEQ has not adopted the Human Health Criteria** in EPA's National Recommended Water Quality Criteria for Pentachlorophenol."
 - 1. Annette Cusher, P.E., Remedial/Corrective Action Engineer Supervisor, Technical Branch, Hazardous Waste Division, ADEQ in email to Charles Grisham, Junior dated July 28, 2010
- F. Please see attached support documentation on separate DVD
 - 1. My email of August 22, 2013 to Stephen Tzhone, with nine (9) attachments

Stephen Tzhone referred to page 9 of the Arkwood ROD (i.e.: the shallow karst aquifer beneath the site is classified as a Class IIb aquifer, which is considered a potential drinking water aquifer) and page 65 of the Arkwood ROD (i.e.: the selected remedy for groundwater applying Arkansas Water Quality Standards). Stephen Tzhone stated that EPA and ADEQ will work together to verify the remedial goal for groundwater and make clear the numerical cleanup number. Mark Moix indicated that ADEQ will be providing the EPA with a written response.
- V. Suggestions for EPA improvement (supporting documentation appended by CD)
 - A. Compare website for Arkwood reporting to that of Koppers Oroville Plant (R9)
 - B. Refine FOIA request/response process

Charles Faultry advised that the Region will be responsive to FOIA requests and thoroughly review the situation to determine whether all responsive files have been released. Gloria Moran stated that

agency records that are responsive to a FOIA request will be withheld by the Region if they contain information which the EPA has determined to be exempt under FOIA. There are nine FOIA exemptions which provide a basis for withholding documents. When EPA determines that information in records is exempt under FOIA, the exemption is commonly one of the following: Exemption 4 (CBI); Exemption 5 (inter-agency or intra-agency memorandums that are deliberative and pre-decisional or are protected under the Attorney-Client privilege or Attorney Work-Product Privilege), or Exemption 6 (personal privacy information). Dwayne Patrick stated that FOIA Online is the current tool by which information responsive to a FOIA request is made available to the public.

- C. Create marketplace for RfR sites on EPA website, assist owners with marketing
- D. Address systemic failures that cost taxpayers money and hurt agency efficacy
- E. Proactively engage the community, economic development commissions, government, and private industry at the local, regional and state levels to assist in developing comprehensive solution for site reuse
- F. Get better contractors (or, preferably, assume in-house responsibility and maintain with Federal salaried staff) for EPA public-facing website (epa.gov), including all public subdomains
- G. Address the circumstances surrounding my FOIA request #R6-2013-003349, which became FOIA appeal EPA-HQ-2013-004621
- H. Address the September 21-23, 2010 Superfund Information Systems "Customized CERCLIS/RODS Report Order Form (ROD)" issue
- I. Address additional examples of unresponsiveness in documentation provided separately to EPA on CD

VI. New Conceptual Site Model

- A. "During the current 5 year review period, it is recommended that EPA Region 6 consider a re-review of existing site characterization data and information, the need to develop a more accurate CSM which advances the understanding of (1) the nature and extent of waste residuals that currently exist at the site, (2) the ground water flow directions/patterns, (3) contaminant fate and transport, and (4) whether New Cricket Spring captures all of the contaminated water that emanates from the site. It is also recommended that a hydrogeologic investigation be initiated that includes the review of previous ground water investigations reports, remedial investigations, etc.
 - 1. 13-R06-002) (S. Huling (GWERD) 580-436-8610) in Highlights, National Risk Management Research Laboratory Ground Water and Ecosystems Restoration Division Robert S. Kerr Environmental Research Center Status Report for the week of April 22, 2013

Carlos Sanchez stated that hydrogeologic investigations are difficult in a karst environment. Stephen Tzhone indicated EPA Region 6 has not yet made a decision on conducting a hydrogeologic investigation; however, all EPA HQ groundwater recommendations are under consideration, as part of the verification for contaminated groundwater migration remaining under control.

- B. Clarify site's actual boundaries and legal description per the new conceptual site model
 - 1. Compare the following:
 - a) 1988 Consent Decree description (18.076 acres)
 - b) 1990 ROD maps and description ("approximately 15 acres")
 - c) "survey for McKesson Inc" dated 30 June 2009 with expanded boundary (30.74 acres)

- d) EPA R6 aerial map with expanded boundary created 17 November 2009 (30.74 acres)

Stephen Tzhone indicated that due to the 2012 EPA HQ dioxin preliminary remediation goals, the site boundaries may change when the dioxin re-evaluation is completed. Gloria Moran indicated that for purposes of Institutional Controls, the most recent legal description of the site will serve as the site's actual boundaries at this time.

Curt Grisham asked EPA HQ how the dioxin cleanup goal can go from 20,000 ppt to 660 ppt. Marlene Berg informed that the previous dioxin industrial cleanup goal represented the previous scientific understanding of dioxin at that time. The new 660 ppt goal is a conservative level based on current science and is a preliminary remediation goal which is used as a starting point in developing final remediation goals. The final remediation goals can be adjusted by EPA Regions using site-specific exposure factors instead of the national exposure factors. EPA HQ will be working with EPA Region 6 and ADEQ in review of the revised conceptual site model and any site-specific field sampling data.

- C. Can site area boundaries be reduced in size as result of new Conceptual Site Model?

Possibly; however, Marlene Berg indicated that the change in dioxin toxicity and goals by EPA HQ in 2012 was toward a more stringent goal.

- D. Result of the site's reassessment for dioxin risk

Carlos Sanchez and Stephen Tzhone indicated that the site dioxin re-evaluation is anticipated to be completed by September 2014. This assumes that by this Fall/Winter, the conceptual site model and field sampling plans will have been approved by EPA Region 6, with concurrence by EPA HQ and ADEQ. Then, Winter/Spring the field sampling can be conducted with subsequent data validation. Then, Spring/Summer will be data interpretation with a site dioxin re-evaluation report to be finalized by September 2014.

- E. Besides dioxin & pentachlorophenol, what other chemicals are of concern at Arkwood?

Stephen Tzhone indicated that the contaminants at the site are: Pentachlorophenol (PCP), Dioxin, and Polynuclear Aromatic Hydrocarbons (expressed as Benzo(a)pyrene equivalents). Jon Rauscher added that Polynuclear Aromatic Hydrocarbons are essentially creosote related semi-volatile organic chemicals.

- F. Details and outcomes of any other studies performed for all media

Stephen Tzhone indicated that the groundwater report for the injection stoppage will be submitted by McKesson in the Fall and be reviewed by EPA Region 6, EPA HQ, and ADEQ.

- VII. Comments and questions on EPA "draft of the corrected deed notice" received August 27, 2013 from Gloria Moran, Assistant Regional Counsel (6RC-S) Superfund Branch, U.S. Environmental Protection Agency

- A. What is the legal definition of "groundwater" for these purposes?

Gloria Moran responded that groundwater is defined pursuant to CERCLA as "water in a saturated zone or stratum beneath the surface of land or water." Curt Grisham opined that water was groundwater unless it pops up at New Cricket Spring and that most of the time the Spring was dry.

- B. No drinking water (wells or otherwise) were ever documented as contaminated

1. City water supply was built as a precaution

Gloria Moran reiterated that the groundwater has not achieved its cleanup goal as specified in the 1990 Record of Decision and that shallow groundwater is contaminated. Restrictions to groundwater will specify shallow groundwater.

C. Suggested changes:

1. paragraph 6 "Soil Contamination" should say "...concentrations that **do not** allow..."

Gloria Moran indicated that to eliminate any ambiguity in paragraph 6, the specification that the site is "restricted to industrial use only" will be added here. Gloria Moran also stated that at sites, such as the Arkwood site, where the land has not been cleaned up to support unlimited use and unrestricted exposure, restrictions on the use of the property are appropriate. Gloria Moran referred to 40 C.F.R. Section 300.430 (f) (4) ii which states: "If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall review such action no less often than every five years after the initiation of the selected remedial action."

2. paragraph 7 "Groundwater" add **"Property Owner shall have no responsibility whatsoever for the mouth of New Cricket Spring, where water remedy is in effect, as the mouth of New Cricket Spring is physically located off of the subject real property."**

ADEQ informed that the mouth of New Cricket Spring is located on adjacent property owned by McKesson. Gloria Moran indicated that present or successor Arkwood site owners, or Arkwood site lessees will not be responsible for measures in institutional requirements involving off-site areas such as the mouth of New Cricket Spring. As the owner of this off-site property, McKesson will be solely responsible for complying with requirements involving the mouth of New Cricket Spring.

3. paragraph 7 "Groundwater" add, **"Existing deep wells on site are not considered groundwater for the purpose of this IC and are therefore not limited or restricted hereby."**

Gloria Moran indicated that the shallow groundwater only will be restricted.

4. paragraph 8 "Engineering Controls" Find more definitive and limiting language to specify these controls exactly

- a) more specific and limited than "...certain engineering controls including..."

Stephen Tzhone indicated that since the dioxin re-evaluation is underway and EPA HQ has made recommendations for groundwater as well, this language would capture any future engineering controls that are not currently specified in the deed notice, if needed.

5. paragraph 8 "Engineering Controls" replace "for at least 30 years following the completion of remediation" with **"until December 31, 2025."**

Gloria Moran referred to the regulations pursuant to the Resource Conservation and Recovery Act which require post-closure care of a hazardous waste unit such as a capped area for thirty years. Carlos Sanchez stated that the thirty-year requirement is a standard timeframe for these requirements

6. paragraph 8 "Engineering Controls" ii) "maintaining the topsoil and grass cover" add **"except the owner may remove the topsoil and grass cover by providing a replacement concrete, asphalt or other compacted material cover acceptable to US EPA."**

Curt Grisham offered that one anticipated use was a feedmill by Tyson or Butterball and that the property could be paved with concrete. EPA agreed that this may be a positive idea in light of the new dioxin soil preliminary remediation goals and requested to be provided with information if such an offer was available.

7. paragraph 12 "Monitoring and Maintenance, etc." iii. "Certify in writing to the USEPA, etc." replace "for at least 30 years following the completion of remediation" with **"until December 31, 2025."**

Gloria Moran reiterated the thirty years information and indicated that there will be no revision due to that information.

8. paragraph 14 "Notices" i. add **"except said notice is not required when the property is conveyed to a beneficiary of the estate mentioned above."**

Gloria Moran indicated that the beneficiary of an estate must comply with the terms of the Institutional Control.

VIII. Arkwood Land Revitalization

A. What is the timeframe for Arkwood's return to productive use?

1. Built into new Conceptual Site Model?

Carlos Sanchez indicated that Arkwood site can return to productive use at any time, provided that the remedy, and any updates due to the dioxin re-evaluation, is not compromised.

B. Status of SWRAU certification

Carlos Sanchez indicated that the EPA is in the process of verifying if the site still meets the criteria for Site-wide Ready for Anticipated Use (SWRAU), as part of the site dioxin re-evaluation.

C. EPA affirms Casey Lockett-Snyder's statements:

1. "Otherwise stated, EPA concurs that Arkwood Inc. Superfund site is ready for industrial reuse."
2. "The current property owner has advised EPA that he is looking for potential purchasers for the Arkwood Inc. Superfund site property and EPA supports efforts to bring the site into industrial reuse."
 - a) Letters of February 28, 2012 from Mr. Lockett-Snyder to J. Michael Norton, Executive Director, The Northwest Arkansas Economic Development District, Inc. and March 19, 2012 from Mr. Lockett-Snyder to Clyde Rhodes, Hazardous Waste Division Chief, Arkansas Department of Environmental Quality (since replaced now by Tammie J. Hynum)

D. Status of determination of RfR effort

1. as per "Guidance for Preparing Superfund Ready for Reuse Determinations (OSWER 9365.0-33-D)

E. Does Arkwood meet both the "PFP" and "RAU" measures?

1. as per "Guidance for Documenting and Reporting Performance in Achieving Land Revitalization" (OSWER 9200.1-4)

Carlos Sanchez indicated that measures associated with achieving land revitalization are being verified as part of the dioxin re-evaluation.

IX. Liability concerns

A. What is financial “threshold” for EPA to pursue the assets of a PRP?

Gloria Moran explained that there is no specific financial “threshold” for EPA to pursue the assets of a PRP. Rather, the EPA determines whether a PRP is viable based on the ability to pay for or perform a response action. This is often done by evaluating financial information from the PRP from tax documentation, and information about assets (income, bank accounts, investments et al.) and liabilities (expenses). Gloria Moran explained further that while the EPA maintains the ability to pursue any of its outstanding costs from a PRP at any time, it will only do so based on an evaluation of the PRP's ability to pay.

B. Exempt proceeds of any sale of Arkwood site from claim or garnishment?

Gloria Moran explained that EPA may seek information from the owner/seller PRP about the proceeds of any sale of the site. With this information, the EPA could commence an assessment of the PRP's viability and decide accordingly.

C. Self-implementing aspect of Brownfield protections for BFPPs is intimidating

Curt Grisham commented that a potential bona-fide prospective purchaser (BFPP), such as Tyson or Butterball, can be interested in the site to use as a feed mill to grind corn that would then be supplied as feed to their poultry houses. He also posed a hypothetical re-use for the property: another wood treatment facility might be possible since the drinking water levels of concern may be relaxed in the future (a reference to the 9/28/2008 Reregistration Eligibility Decision for Pentachlorophenol cited in item IV A. 1. of his meeting agenda).

Dara Hall advised Curt that while ADEQ would not oppose any prospective buyer/reuse of the property but that he might want to explore selling or leasing to an entity that does not treat wood. Dara Hall stated that if he were the attorney for a prospective buyer of the site he would strongly advise his client not to engage in a similar wood treatment activity at the site precisely because it was done in the past.

Putting another wood treatment facility on the property would be a litigation nightmare for the facility and subject them to potential liability for any contaminants found on the site in the future (i.e: If the property is re-used this way, how could one prove that remaining site contaminants came from the previous or new treatment facility?).

Gloria Moran mentioned that a prospective buyer of the property was required to perform All Appropriate Inquiries prior to purchasing a site such as the Arkwood site in order to be a bona fide prospective purchaser and obtain protection from liability under Superfund. Gloria Moran also stated that to remain a non-labile buyer after purchasing the property, the buyer must comply with the continuing obligations requirement, including complying with the terms of the Institutional Control.

1. Other assurances possible for BFPPs?
2. If agreement regarding the cleanup is complete and satisfied between parties, could EPA covenant with McKesson or other PRP promising not to sue?

Gloria Moran explained that the any covenants concerning McKesson or other PRP are in the negotiated agreements and consent decrees for that PRP. However, in general, a PRP (or more specifically, the identified Arkwood Responsible Parties) will remain liable for the site under CERCLA for as long as EPA incurs costs in connection with the site.

Curt Grisham stated that his father is in his 80's, and asked whether his father could be released from liability. Gloria Moran stated that Curt Grisham's father, Bud Grisham, is a Responsible Party and remains liable under CERCLA for the site. Gloria Moran added that costs will continue to be incurred because the site is undergoing dioxin re-evaluation, groundwater remedial action, and ongoing five year reviews.

- a) as per Ms. Moran in telephone conversation of March 25, 2013
- 3. de minimus/ de micromus or other provision to release my father as PRP from liability forever?

Gloria Moran explained that these Superfund categories of responsible parties do not apply to Curt Grisham's father, Bud Grisham. Mr. Bud Grisham remains liable as a Responsible Party.

- 4. Where do beneficiaries of estate who come into ownership of superfund site stand in liability chain?

Gloria Moran informed that a person who inherits property may be an innocent owner. Gloria Moran cited 42 U.S.C 9607(b) (3) of Superfund which provides that a person who takes by inheritance may be excluded from liability if: 1) the release of contamination was caused solely by a third party; 2) as the landowner, he exercises due care with respect to the hazardous substance; and 3) as the landowner, he takes precautions against foreseeable acts or omissions of a third party. Gloria Moran indicated that if Curt Grisham does indeed inherit the property and becomes the new landowner, Curt Grisham must provide full cooperation and assistance, facility access to EPA that is necessary for a response action at the site, comply with any land use restrictions established for the site, and refrain from impeding the effectiveness or integrity of the institutional control per 42 U.S.C. 9601(35) (A) (iii).

X. Close Out / Deletion

- A. as per Close Out Procedures for National Priorities List Sites (OSWER Directive 9320.2-22 May 2011)
 - 1. "Deleting a site from the NPL requires a **modification to the Code of Federal Regulations**. To perform this task, the Administrative Procedure Act requires formal administrative rule-making procedures which include creating a docket, publishing notices in the Federal Register, and holding a formal public comment period." (5.4 "The Deletion Process")
- B. Has Mr. Sanchez written to ADEQ requesting their concurrence that the Arkwood Inc. Superfund site (EPA ID: ARD084930148 Site ID: 0600124) be submitted for partial deletion from the National Priorities List?
 - 1. "The first step involves EPA sending a letter to ADEQ requesting their approval to delete the site. CAS"
 - a) November 25, 2011, email to CCGJr from Carlos Sanchez
- C. Is Arkwood a candidate for Direct Final/ Direct Deletion/ Direct Final Rulemaking Process?
- D. When will US District Court relinquish jurisdiction?
 - 1. "Retention of Jurisdiction," Consent Decree, 1988
- E. What other loose ends must eventually wrap up for closeout/ deletion?
 - 1. Petition to amend?

Carlos Sanchez and Stephen Tzhone indicated that a partial deletion may be possible. However, due to the dioxin change, considerations for partial deletion will come after the site completes its dioxin re-evaluation. Gloria Moran indicated that the corrected deed notice must be in place as well.

- XI. Outcome of the discontinuance of on-site H₂O injection "pilot study" and recommendation for the "study" going forward
- A. Was sufficient data gathered to account for wide variations year-to-year of rainfall, other variables not analyzable in short term?
- B. Resolve following discrepancies:
1. On May 10, 2012 I wrote to Carlos Sanchez and said:
 - a) "I would like to draw your attention please to Jean Mescher's statement in her March 9, 2010 letter to EPA under IV. PROBLEMS ENCOUNTERED OR ANTICIPATED:
(1) 'None. Discontinued operation of the pilot system does not appear to have a detrimental effect on the concentration of PCP at the spring mouth.'
 - b) On May 11, 2012, at 10:56 AM, Carlos Sanchez wrote:
 - (1) "Thanks Curt for the information, **This will help in making the decision to continue the pilot project.** Last week we requested that McKesson conclude this Pilot Project and prepare a report on the result of the pilot test. EPA believes that McKesson has sufficient information to make an evaluation."
 - c) Compare and contrast the following two official statement by McKesson in reporting to EPA:
 - (1) "The increased flow through New Cricket Spring since initiation of the pilot system for injection of ozonated and non-ozonated water into the flow channel of New Cricket Spring **is believed to have enhanced** the degradation of PCP."
(Emphasis added)
 - (a) From "2011 Annual Report Arkwood, Inc." prepared on behalf of McKesson Corporation
 - (2) "Discontinued operation of the pilot system **does not appear to have a detrimental effect on the** concentration of PCP at the spring mouth."
(Emphasis added)
 - (a) Jean A. Mescher, Project Coordinator, Director, Environmental Services, McKesson in letter of March 9, 2010 to Shawn Ghose, EPA Project Coordinator
- C. Will onsite injection operations cease permanently?
1. remove apparatus
 2. fill and seal wells drilled onsite by PRP
 3. repair soil cap disrupted by this "pilot" at the site of contamination

Stephen Tzhone indicated that EPA directed McKesson to cease onsite injection operations in 2012 (EPA August 22, 2012 letter) and that a groundwater report for the injection stoppage will be submitted by McKesson this Fall and be reviewed by EPA Region 6, EPA HQ, and ADEQ. Stephen Tzhone stated that onsite injection operations will remain ceased during the review of the groundwater report and afterwards, a path forward direction will be given.